

Safety and Enforcement Division



Gas Safety Citation Program

Standard Operating Procedure

Version 1.0

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2 DOCUMENT PURPOSE AND DISCLAIMER

This Gas Citation Program Standard Operating Procedure (SOP) sets forth the general principles to be considered by the California Public Utilities Commission's (Commission or CPUC) Safety and Enforcement Division (SED) when taking enforcement action authorized by Resolution ALJ-274. This document should clarify expectations regarding the process to be used by SED to assess and decide the disposition of gas safety violations under General Order 112-E and its successors.

This SOP is not a regulation and was not ordered or authorized pursuant to any formal decision or other action by the Commission. The SOP is not required in order for SED to issue citations pursuant to Resolution ALJ-274.

As a Staff management document, the SOP may be developed and amended at the sole discretion of SED management without notice to any affected parties. In order to more fully inform the development of the SOP and the success of the Gas Safety Citation Program, SED held public workshops to take comments from interested parties regarding the SOP.

As a guidance and management document, the SOP is not binding on anyone, including, without limitation, the Commission, SED, or SED staff. As such, SED may, in its sole discretion and without any public notice or justification, modify and/or entirely eliminate the SOP and/or deviate from the guidance provided in the SOP. Nothing in the prior SED public process to develop the SOP requires SED to follow such processes in the future, or to take comment from anyone regarding changes it makes to the SOP, or a decision to completely eliminate the SOP. The SOP does not create any due process rights in an interested party and neither the SOP, nor any deviations from the SOP, may be used as a basis for any appeal of a citation issued by SED.

3 CPUC VISION, MISSION AND VALUES

3.1.1 VISION

The California Public Utilities Commission (the Commission or CPUC) better the lives of all Californians through our recognized leadership in innovative communications, energy, transportation, and water policies and regulation.

3.1.2 MISSION STATEMENT

The CPUC serves the public interest by protecting consumers and ensuring the provision of **safe**, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy. We regulate utility services, stimulate innovation, and promote competitive markets, where possible, in the communications, energy, transportation, and water industries.

3.1.3 VALUES

LEADERSHIP: We lead with integrity, take initiative, and inspire a shared vision in the pursuit of the public interest.

EXCELLENCE: Our skilled, dedicated, and diverse workforce provides the highest quality products and services.

PEOPLE: We promote professional growth, empowerment, innovation, accountability, teamwork, collegiality, and mutual respect.

PARTICIPATION: We provide an open, fair, timely, and inclusive process.

STEWARDSHIP: We are responsible stewards of the human, financial, information, and natural resources entrusted to us.

COMMUNICATION: We provide accurate, timely information and consumer education.

4 OVERVIEW

4.1 GAS SAFETY CITATION PROGRAM MISSION

Enforce gas safety regulations in an effective manner and consistent with Resolution ALJ-274. Ensure that the gas system owners and operators (utilities) in California operate their systems safely, including, without limitation, ensuring compliance with federal regulations, state laws, and Commission Orders such as General Order 112-E.

4.2 STAFF CITATION AUTHORITY

The CPUC Gas Citation Program is governed by the California Public Utilities Code (P.U. Code) and CPUC Resolution ALJ-274, which establishes basic citation policies and fines for enforcement of gas safety regulations by SED.¹ Citations will be issued for violations of General Order (GO) 112-E and the laws, rules, and regulations incorporated therein by reference, including Federal and State regulations.² GO 112-E Rule 102.2 states, “These rules are concerned with safety of the general public and employees’ safety to the extent they are affected by basic design, quality of the materials and workmanship, and requirements for testing and maintenance of gas gathering, transmission and distribution facilities and liquefied natural gas facilities.”

The Citation Program described in Resolution ALJ-274 delegates to Staff³ the authority to draft and issue citations for violations of GO 112-E and the Code of Federal Regulations,⁴ Title 49, Parts 190, 191, 192, 193, and 199.

Resolution ALJ-274 states: “We delegate to Staff the authority to require immediate correction of the violations, as appropriate, and to levy fines for violations in the amounts prescribed for penalties by P.U. Code § 2107. Each violation is a separate and distinct offense and each day of an ongoing violation may be cited as a separate and distinct offense, consistent with P.U. Code

¹ See Reference 1 – ALJ-274

² See Reference 2 – GO 112-E

³ As used throughout ALJ-274, the term “Staff” refers to Safety and Enforcement Division Staff or such other Staff as may be designated by the Executive Director to carry out the particular functions involved.

⁴ See 49 CFR §§190, 191, 192, 193, and 199.

Section § 2108. Penalty payments are the responsibility of shareholders of the investor-owned natural gas utilities and are not to be charged to ratepayers.” Resolution ALJ-274 also sets forth the appeal process for objecting to such citations.

In addition, California P.U. Code § 702 states: “Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.”

4.3 IDENTIFICATION OF VIOLATIONS

A violation is a failure “to comply with state law or “any order, decision, decree, rule, direction, demand, or requirement” of the Commission.⁵ The enforcement process begins with the identification of a violation, which is usually done through one of the following:

- SED audit;
- SED inspection;
- SED investigation;
- Utility self-report⁶;
- Concern brought to SED’s attention by other parties.

After a potential violation is identified, SED looks at the facts, evidence, utility’s conduct, and the risk posed by the violations, among other factors. SED reviews each violation or set of violations in light of the factors above to determine whether a citation should be issue, and if so, the level of the fine that should be assessed. The operating tenet is that any violation can and will likely result in a citation, absent circumstances that evoke an alternative action.

⁵ See, e.g., P.U. Code § 2107.

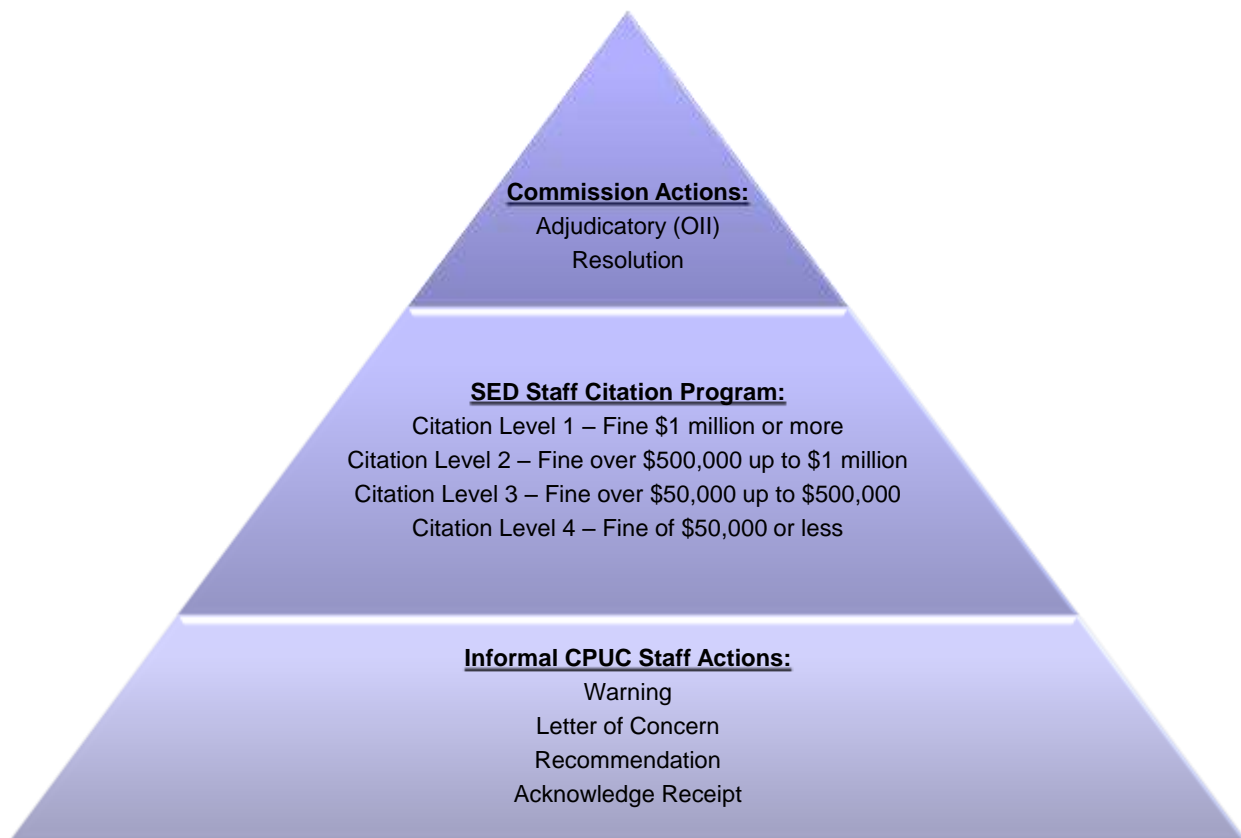
⁶ Per ALJ-274, utilities are to provide notice of any self-identified and self-corrected violations to Commission staff and to local authorities within ten calendar days of self-identification of the violation.

5 THE ENFORCEMENT FRAMEWORK

5.1 ENFORCEMENT OPTIONS

SED and the CPUC have several enforcement action options, ranging from informal staff communication to formal adjudicatory proceedings (see Figure 1: Enforcement Options). The general purpose of SED informal actions is to provide ongoing feedback to utilities regarding safety programs and dispose of minor violations that do not warrant a citation due to minimal safety risks. If staff recommends issuance of citation, a management review will be conducted as described in Section 4.1 of this document. SED may also escalate some cases into a Commission-level action, such as by recommending an Order Instituting Investigation (OII).

Figure 1: Enforcement Options



5.2 CHOOSING THE RIGHT ENFORCEMENT OPTION

5.2.1 CITATIONS AS PRIMARY ENFORCEMENT ACTION FOR VIOLATIONS

As a general rule, SED will issue a citation for an identified violation, absent a compelling reason to pursue Informal Staff Action or an OII. This is because the Gas Safety Citation Program was put in place pursuant to Resolution ALJ-274 in recognition of the fact that Informal Staff Actions have limited effectiveness in changing utility behavior, and OIIs are too laborious to be a frequent enforcement tool.

5.2.2 INFORMAL STAFF ACTION

The following are examples of Informal Staff Actions that may be pursued, if appropriate and issuance of a citation is not justified:

Warning Letter - SED may elect to issue a warning letter to address a safety concern or a potential violation. The purpose of a warning letter is to notify a utility of an SED concern and indicate that the situation must be corrected or prevented from recurring, or a more stringent enforcement action may be taken. These warning letters may be used for violations that are more “administrative” in nature and do not have a significant or immediate safety impact. Another typical example for use of a warning letter is in situations when it’s not immediately clear that an actual violation of code has taken place, but staff nevertheless is concerned with implications for safety.

Letter of Concern - SED may elect to issue a letter of concern when staff becomes aware of situations that may not necessarily be violations but are still worthy of informing the operator. These letters are used to notify operators of potential program weakness or safety concern when code violations are not present.

Recommendation Letter - A recommendation letter may be issued when SED identifies potential opportunities for improvement of utility safety programs. Recommendation letters may be used to promote improved safety practices when a violation does not exist. A recommendation letter may be combined with a letter of concern in cases where SED has specific recommendations to address an issue.

Acknowledgement – SED may issue an acknowledgement in instances where a utility provides safety related information to staff. The purpose of the acknowledgement is to notify operator that SED has either completed its investigation, suspended its investigation, or does not intend to take further action at this time.

5.2.3 ORDER INSTITUTING INVESTIGATION (OII)

An OII is a formal investigation conducted by SED when directed by the Commission. SED may recommend to the Commission to open a formal investigation, but an OII can only be initiated through the Commission approval. OIIs require a preliminary written investigation by SED, which serves as the basis for the OII. OIIs are extremely time consuming legal cases, often involving evidentiary hearing, discovery by SED and of SED by the utility, and preparation of testimony and cross examination of SED staff.

Because OIIs are so burdensome to both initiate and litigate, they are only used in limited circumstances. Some examples that typically warrant an OII are actual major events that are complex in nature, caused fatalities, substantial injuries, and/or involve significant property damage in a widespread area. Other instances that may require an OII are allegations of fraud or negligence by a utility. OIIs allow the Commission to thoroughly examine the case and determine the appropriate resolution.

6 CALCULATING THE AMOUNT OF THE FINE

6.1 SUMMARY OF THE LEGAL REQUIREMENTS THAT APPLY TO CALCULATING A FINE

Pursuant to Resolution ALJ-274, SED must adhere to the maximum fine amount provided in P.U. Code § 2107, which is currently \$50,000 for a single violation.⁷ Further, pursuant to P.U. Code § 2108, SED must count each day of a continuing violation as a separate and distinct offense. Once Staff calculates the maximum fine under the P.U. Code, the amount of the fine must be analyzed pursuant to the factors sets forth in P.U. Code § 2104.5. These factors include:

- The severity of the offense;
- The conduct of the utility before, during, and after the offense;
- The financial resources of the utility;
- The totality of the circumstances; and
- The amount of the fine in the context of prior Commission decisions.⁸

The fine amount may be adjusted downward by taking these factors into consideration.

6.2 FACTORS TO BE CONSIDERED BY SED IN ADJUSTING THE FINE AMOUNT

In many instances, multiple violations occurring over a period of time can be grouped into a single citation. This may include multiple violations caused by a single root cause over a period of time, or several violations identified during an investigation of a single event. While keeping in mind the legal framework summarized above, SED calculates the maximum fine for a violation or a group of violations and then takes the following factors into consideration to determine whether to adjust the maximum fine downward:

1. The severity of the offense: the risk level of the violation(s), as determined by applying the Risk Matrix⁹

⁷ Where violations occurred prior to January 1, 2012, SED policy has been to assess the prior maximum amount set forth in the P.U. Code for the period of violations prior to January 1, 2012.

⁸ Consideration of these factors is also consistent with long-standing Commission precedent. *See, e.g.*, D.98-12-075.

2. The conduct of the utility before, during, and after the offense
3. Previous occurrences of similar violations by the utility
4. Self-reporting of the violation by the utility
5. Indication of the violation(s) being willful
6. Actions taken by the utility to address the violation, including:
 - a. Corrective action(s) taken by the utility
 - b. Prompt initiation and completion of the corrective action (s)
 - c. Performance of a root cause analysis
 - d. Shareholder money invested to fix the problem¹⁰
7. Associated safety related condition¹¹
8. The financial resources of the utility;
9. The totality of the circumstances;
10. The amount of the fine in the context of prior Commission decisions; and
11. Other factors deemed relevant by SED.

SED weighs all the factors above to determine whether the maximum fine amount will be reduced, and if so, by how much. Risk assessment informs the analysis, but it is not the overriding factor. Therefore, SED has developed an indicative schedule of fines that outlines the likely enforcement actions based on the level of risk (see Figure 3: Likely Enforcement Action based on Risk Level).

It should be noted, that while SED will take into consideration the fact that utility has self-reported a violation, self-reporting by utilities is not optional. Per ALJ-274, the Commission has required the utilities to provide notice of any self-identified and self-corrected violations to Commission staff and to local authorities within ten calendar days of self-identification of the violation.

6.3 RISK INFORMED SCHEDULE OF FINES

⁹ This factor corresponds to the “Severity of the Offense” factor under P.U. Code § 2104.5.

¹⁰ Factors 2-5 correspond to the “The conduct of the utility before, during, and after the offense” factor under P.U. Code § 2104.5.

¹¹ Defined in 49 CFR § 191.23

SED developed a risk matrix¹² (see Figure 2: Risk Matrix) to measure the probability and consequence of a violation or a set of violations. Some of the items SED may consider when assessing consequences of a violation are the effect to life and property; utility asset failure; environmental impact; an actual v. potential safety event; layers of protection built in to the system. SED has adopted a risk framework that includes five levels of risk – with Risk Level 5 being lowest and Risk Level 1 being highest.

SED defines risk as the potential for an unwanted outcome resulting from an incident, event, or occurrence, as determined by its likelihood and the associated consequences.¹³ In the context of a violation, historical data will be used wherever possible to inform the likelihood of occurrence (i.e. how often this violation occurs) and the associated consequences as determined by the facts of the associated events. In addition to actual safety events, staff may consider “potential” events or “what could have happened”. In this context, the SED will consider not only the facts, but whether the situation could have been worse and the probability of each scenario. For illustrative purposes, this document (see Table 1: Illustrative Staff Steps in Using the Risk Matrix) articulates the main steps for using the risk matrix in the case of an actual violation:

Table 1: Illustrative Staff Steps in Using the Risk Matrix

Step	Action by SED
1	Determine the likelihood of the particular violation occurring in the future
2	Determine the consequence of the event using the parameters in the risk matrix
3	Align the vertical and horizontal matrix and determine risk score
4	Using the associated risk score, determine the risk informed minimum and maximum penalties
5	Weigh aggravating and mitigating factors, as well as those factors provided by PU Code § 2104.5
6	Recommend Penalty amount and prepare citation for management review

¹² A Risk Matrix is a tool for ranking and displaying components of risk in an array. Source: DHS Risk Lexicon – 2010 Edition.

¹³ DHS Risk Lexicon – 2010 Edition

Figure 2: Risk Matrix

			PROBABILITY				
			Extremely Improbable Once in 35 years	Possible Once in 10 years	Remote Once every 1 -2 years	Occasional 1 -12 times per year	Frequent More often than Once a Month
CONSEQUENCE	Catastrophic	Potential or actual occurrence of: - Loss of life - Widespread and sustained (≥ 24 Hrs.) loss of service - Property damages of over \$ 1 million - Massive environmental effect	3	2	1	1	1
	Critical	Potential or actual occurrence of: - Numerous serious injuries - Localized and sustained(≥ 24 Hrs.) service disruption - Damages to critical assets - Property damages between \$500,000 - \$1 million - Significant local environmental effect	3	3	2	1	1
	Moderate	Potential or actual occurrence of: - Single serious injury - Multiple minor injuries - Service disruption(≤ 24 Hrs.) - Property damages between \$50,000 - \$500,000 - Some local environmental impact	4	4	3	3	2
	Minor	Potential or actual occurrence of: - Minor injury - Minimal service disruption - Asset damage - Property damage less than \$50,000	5	5	4	4	3 / 4
	Extremely Limited	Extremely Limited - Medical treatment for injuries limited to first aid - Extremely limited or non-existent damage to assets	5	5	5	5	4 / 5
Risk Level (RL) Legend:			RL 1: Extreme Risk	RL 2: High Risk	RL 3: Moderate Risk	RL 4: Low Risk	RL 5 Negligible Risk

Figure 3: Likely Enforcement Action based on Risk Level

Risk Level	Risk	Likely Venue	Likely Enforcement Action	Likely Penalty Range
RL 1	Extreme Risk	Commission Action	OII or Resolution	Varies
RL 2	High Risk	SED Citation/Commission Action	Citation Level 1, OII or Resolution	\$1,000,000 +
RL 3	Moderate Risk	SED Citation	Citation Level 2, Citation Level 1	\$500,000 - \$1,000,000+
RL 4	Low Risk	SED Citation	Citation Level 3, Citation Level 4	\$0 - \$500,000
RL5	Negligible Risk	SED Citation/Informal SED Staff Action	Citation Level 4/Informal SED Staff Action	\$0 - \$50,000
RL 0	Reviewed, Has No Safety Implications, Not Applicable	Informal SED Staff Action	Informal SED Staff Action	\$0

7 CITATION PROCESSES AND PROCEDURES

7.1 INTERNAL REVIEW PROCESS

The SED enforcement options require SED management reviews prior to their issuance. The level of review and approval by management, or their designees, varies depending on the recommended citation level and/or risk level. Commission action enforcement options require a Commission vote. SED management engagement varied based on the type of enforcement action (e.g. whether SED is a party to an OII). Citation enforcement options require different levels of management sign-off depending on the level of citation:

- Citation Level 1 (\$1 million or above) require review and approval of the SED Director
- Citation Level 2 & 3 require review and approval of the SED Deputy Director
- Citation Level 4 require review and approval of the SED Program Manager

For informal SED staff actions, the level of review varies depending on the issue, but typically involves at least two levels of SED management review.

In addition to the review process outlined above, on a periodic basis SED will analyze the violations and corresponding enforcement actions for consistency and proper determination of the applicable enforcement action.

7.2 ISSUING A CITATION

The citation process is prescribed in Resolution ALJ-274, in summary:

- Staff should use the standard citation form.
- Staff should ensure that the citation complies with the content requirements of Resolution ALJ-274, Appendix A, Section I. Among other things, the “Directions for Submitting an Appeal to a Citation” and the “Notice of Appeal of Citation” should be attached to the citation.

7.3 THE CITATION APPEAL PROCESS

Pursuant to Resolution ALJ-274, the company, utility, organization or individual¹⁴ shall, within ten calendar days of the date of service of the citation, either pay the amount of the fine set forth in the citation or appeal the citation. The appeal process is described in Resolution ALJ-274, Appendix A, Section II. Any appeal should be referred to the Legal Division.

7.4 CONTACT US

SED encourages public comment. To further improve the program, the SED team welcomes recommendations and questions, which can be directed to the Deputy Director of the Safety and Enforcement Division: Elizaveta Malashenko at elizaveta.malashenko@cpuc.ca.gov or 415-703-2274 or to the Risk Assessment Supervisor: Kenneth Bruno at kenneth.bruno@cpuc.ca.gov or 415-703-5265.

¹⁴ Also referred to as “Respondent” in ALJ-274

8 REFERENCES

8.1 REFERENCE 1: RESOLUTION ALJ-274

The Resolution ALJ-274 can be found on the CPUC website at:

http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_RESOLUTION/154205.pdf

8.2 REFERENCE 2: GENERAL ORDER 112-E

The Commission General Order 112-E can be found on the CPUC website at:

http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/126869.htm